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In re Application of
Lomia

Serial No: 10/009,459

PCT No.: PCT/GE00/00002

Int. Filing Date: 28 April 2000

Priority Date: 30 April 1999

Attorney's Docket No.: 101251-73

For: USE OF ANTIEPILEPTICS FOR TREATING
RESPIRATORY DISORDERS, IN PARTICULAR
ASTHMATIC DISORDERS

DECISION ON

PETITION UNDER

37 CFR 1.181

This decision is in response to the "PETITION UNDER 37 CFR § 1.181(a) TO WITHDRAW HOLDING OF ABANDONMENT" filed 03 March 2004. No petition fee is due.

BACKGROUND

On 28 April 2000, applicants filed international application PCT/GE00/00002 that claimed priority of an earlier Georgian application filed 30 April 1999. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 09 November 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 30 November 2000 prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee for the national stage in the United States expired at midnight on 30 October 2001.

On 29 October 2001, applicants filed a letter for entry into the national stage in the United States which was accompanied by a copy of the International Application, a preliminary amendment and the basic national fee of \$450.00. These papers were assigned U.S. Serial No. 10/009,459.

On 14 February 2002, the United States Patent and Trademark Office in its capacity as an Elected Office mailed the "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) indicating that applicant was required to file an oath/declaration and a surcharge fee. The notification set a two-month time period in which to respond.

On 27 February 2004, the USPTO mailed applicant the "NOTIFICATION OF ABANDONMENT" (form PCT/DO/EO/909) indicating that the application was abandoned for failure "to respond to the notification of MISSING REQUIREMENTS (Form PCT/DO/EO/905) mailed 14 February 2002 within the time period set therein."

On 03 March 2004, applicant filed the present petition, accompanied by copies of the transmittal letter, the declaration, an Express Mail certification letter, the Express Mail label and a copy of applicant's deposit account indicating that \$65 was removed on 22 January 2002.

DISCUSSION

The current petition was filed promptly after the mailing of the Notice of Abandonment. Applicant included copies of the declaration and transmittal letter that was filed on 02 January 2002. The transmittal letter includes the Express Mail label number, and the Express Mail receipt indicates that the declaration was filed on 02 January 2002. Further, the surcharge for filing the declaration after thirty months from the earliest priority date was charged to applicant's deposit account on 22 January 2002 and shows a mail date of 02 January 2002. Since a document must have been received by the Office for the Office to apply the money, and the Office cannot locate any of the documents purportedly sent by applicant, convincing evidence has been provided that the Office received and misplaced the documents mailed on 02 January 2002. Further, a review of the USPS database indicates that the Express Mail package was delivered on 07 January 2002.

CONCLUSION

The petition to withdraw the holding of abandonment is **GRANTED**.

The "NOTIFICATION OF ABANDONMENT" (form PCT/DO/EO/909) mailed 27 February 2004 is hereby **VACATED**.

The application is being returned to the United States Designated/Elected Office for processing in accordance with this decision; and, if appropriate, a Notification of Acceptance of Application (Form PCT/DO/EO/903) will be mailed showing a 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date of 02 January 2002.



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